

EXHIBIT E

DEPOSITION OF VICKIE TRICE

EXCERPTS AND EXHIBITS

MCKEE FOODS CORPORATION

vs.

BFP INC., et al.

VICKIE TRICE

November 21, 2024

Checuga Reporting, Inc.

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF TENNESSEE
3 AT CHATTANOOGA

4 MCKEE FOODS CORPORATION,

5 Plaintiff,

6 vs.

Case No. 1:21-CV-00279

7 BFP INC. d/b/a THRIFTY MED PLUS
8 PHARMACY, STATE OF TENNESSEE,
9 And CARTER LAWRENCE in his Official
10 Capacity as COMMISSIONER OF THE
11 TENNESSEE DEPARTMENT OF
12 COMMERCE AND INSURANCE,
13 Defendants.

14
15 Video Deposition of:

16 VICKIE TRICE

17 Taken on behalf of the Plaintiff
18 November 21, 2024

19 Commencing at 9:04 a.m. CST
20
21
22

23 Checuga Reporting, Inc.
24 Michelle Cessna, LCR, RPR
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A P P E A R A N C E S

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Also present:

MS. JENNY CHECUGA - Videographer

1 * * *

2 VICKIE TRICE,
3 was called as a witness, and having first been
4 duly sworn, testified as follows:

5
6 EXAMINATION

7 QUESTIONS BY MR. PICKERING:

8 Q. Please state your full name for the
9 record.

10 A. My name is Vickie Yvonne Trice.

11 Q. Ms. Trice, my name is Bill Pickering, we
12 met briefly before the deposition. Thank you
13 for coming here today.

14 A. Sure.

15 Q. I'll be asking a number of questions
16 about the case that we have going. I represent
17 McKee Foods, the Plaintiff in the case. The
18 Defendants are Thrifty MedPlus Pharmacy and
19 currently the Commissioner of the Department of
20 Commerce and Insurance.

21 Have you ever had your deposition taken
22 before?

23 A. I have not.

24 Q. So you're in for a treat.

25 I'll be asking you a number of questions

1 else was on the -- oh, Jud Jones was on one of
2 the e-mails, as well.

3 Q. And I've seen the name of a Ms. Caro on
4 some of the e-mails?

5 A. Marina is one of my employees.

6 Q. Okay.

7 A. She reports to my manager.

8 Q. Okay. It might be helpful at this time
9 just for you to tell me what your position is.
10 I assume you're employed with the Tennessee
11 Department of Commerce and Insurance?

12 A. I am.

13 Q. What is your current position?

14 A. I'm director of the Consumer Insurance
15 Services area.

16 Q. How long have you held that position?

17 A. I will 18 years in January.

18 Q. Wow, very good.

19 Who currently reports to you?

20 A. I have a manager named Michael Barber
21 that reports to me. And then I have an
22 administrative assistant that reports directly
23 to me. The other employees report to the
24 manager, Michael Barber.

25 Q. Okay. And his title is --

1 A. I guess I'm -- can you clarify
2 "materials"?

3 Q. Right. Anything that you were sent
4 electronically on a computer or any information
5 handouts --

6 A. No.

7 Q. -- guidelines --

8 A. No.

9 Q. -- anything like that?

10 A. No.

11 Q. All right. Anything else that you were
12 provided during that time period in connection
13 with this law?

14 A. No.

15 Q. So at some point were you informed that
16 your division would have some responsibility
17 for administering this law?

18 A. Yes.

19 Q. And tell me about that.

20 A. I think we were in a director meeting and
21 the topic came up, and so we were -- I was made
22 aware that we would probably start receiving
23 complaints in relation to the new passage of
24 the law.

25 Q. Okay. Who else would have been present

1 school. I took some classes at Nashville State
2 for a couple of years, but I did not stay to
3 receive a degree.

4 Q. All right. What kind of classes did you
5 take?

6 A. I started out with some basic math and
7 English classes there, I believe.

8 Q. And so we've talked about the Division of
9 Consumer Services and your employment in that
10 division.

11 What does that division do?

12 A. We mediate complaints for the entire
13 state of Tennessee and we provide education to
14 the residents of Tennessee.

15 Q. What kinds of complaints do you currently
16 mediate?

17 A. Any insurance-related complaint that
18 comes to us, we attempt to mediate that.

19 Q. And would these all be what you call
20 consumer complaints, complaints from
21 individuals?

22 A. Yes. We -- we mediate complaints from
23 providers, consumers. But the majority of our
24 complaints are consumer complaints.

25 Q. And I believe you indicated after Public

1 Chapter 569 became effective, you became
2 involved in the administration of complaints
3 filed under that statute?

4 A. Yes.

5 Q. And do you still do that?

6 A. No.

7 Q. When did that change?

8 A. That changed when the PBM Department was
9 put into place here.

10 Q. Okay. When Mr. -- basically when
11 Mr. Jones was hired?

12 A. Yes.

13 Q. And I believe he was hired in early
14 February of 2023. Does that sound correct to
15 you?

16 A. I think so.

17 Q. So if you don't mind, just think back and
18 tell me in as much detail as you can what you
19 recall about your division's role and your role
20 in the administration of complaints under
21 Public Chapter 569.

22 A. So our complaint process is pretty basic.
23 We have a complaint form that the -- the
24 general public fills out, and the complaint
25 form comes in and gets assigned a tracking

1 that the PBM or the covered entity had not
2 violated the law?

3 A. None that I can recall.

4 Q. In receiving responses to these
5 complaints from PBMs, did they often say that
6 your department has no jurisdiction because of
7 the Employed Retirement Income Security Act of
8 1974?

9 A. Yes.

10 Q. That being ERISA?

11 A. Yes.

12 Q. And did you receive a fair number of
13 those?

14 A. Yes.

15 Q. So what would happen when you received
16 that type of response?

17 A. In most situations, I think those would
18 be transferred to Legal because -- but I can't
19 speak for every single complaint.

20 Q. Right.

21 A. Because I don't -- I don't handle them or
22 review them. But I'm thinking that in most of
23 those types of situations they would probably
24 be transferred to Legal.

25 Q. And were there any that you recall in

1 which either you or the investigators who were
2 responsible for handling these complaints
3 determined that your office had no jurisdiction
4 because of ERISA?

5 A. Yes.

6 Q. And tell me about that. How would you
7 make that determination or why would you make
8 that determination?

9 A. Because from our -- my understanding and
10 our understanding of ERISA, the self-funded
11 plans are the employer plans. And we -- my
12 area doesn't have any jurisdiction over the
13 ERISA plans.

14 Q. Okay. And would that be because federal
15 law takes precedence over the state law?

16 MR. WENNERLUND: Objection, form.

17 BY MR. PICKERING:

18 Q. You may answer.

19 A. Yes.

20 Q. Okay. Do you recall roughly -- and,
21 again, an approximation is perfectly fine.

22 Do you recall roughly how many complaints
23 on which you made determinations that your
24 office lacked jurisdiction because of ERISA?

25 A. I cannot recall that.

1 Q. Was it several?

2 A. Possibly. Like I said, I -- I can't
3 recall.

4 Q. After -- or right before Public Chapter
5 569 went into effect and then maybe in the --
6 the period shortly after that, were there any
7 additional meetings, discussions,
8 conversations, information provided to you
9 about what your division's role would be in the
10 administration of these complaints?

11 A. No, not that I can recall.

12 Q. The meeting that you referenced that the
13 directors attended before the Public Chapter
14 569 was coming down the pike, was there any
15 documentation related to that meeting either
16 before or after?

17 A. No.

18 Q. Were you or the folks working under you
19 in the investigation of complaints under Public
20 Chapter 569 provided any information or
21 guidance regarding the potential effect of
22 ERISA on these complaints?

23 A. No.

24 Q. So in the instances in which you or your
25 investigators made a determination that you

1 didn't have jurisdiction because of ERISA, was
2 that based upon your own understanding of the
3 fact that ERISA preempted the state law?

4 A. Yes.

5 MR. PICKERING: So if we could hand
6 the witness Exhibit 8 to Mr. Jones's
7 deposition.

8 MR. WENNERLUND: This is Exhibit 8
9 from yesterday, Bill?

10 MR. PICKERING: Correct, Exhibit 8
11 from Mr. Jones's deposition yesterday.

12 MR. WENNERLUND: Okay.

13 (WHEREUPON, a document was previously
14 marked as Jones Exhibit Number 8.)

15 BY MR. PICKERING:

16 Q. And this is a Department of Commerce and
17 Insurance bulletin number 21-01 sent to all
18 pharmacy benefits managers dated July 8, 2021,
19 from Commissioner Lawrence.

20 Are you familiar with this particular
21 bulletin?

22 A. I am.

23 Q. Okay. And was this provided to you at
24 about the same time that it was issued in July
25 of 2021?

1 A. (Witness nods head.)

2 Q. Okay. And who advised you that that was
3 an error?

4 A. I think that situation came in when -- I
5 believe when Jud was here. And we had done
6 some of those and closed them as no
7 jurisdiction. And one of the pharm -- yeah,
8 one of the pharmacists that reached out to Jud
9 concerning that issue.

10 Q. All right. And was that pharmacist
11 Thrifty Med, the Bohannons?

12 A. I don't recall. Actually, I don't think
13 so.

14 Q. Okay. Do you recall who it would have
15 been?

16 A. No. I think that was one of the e-mails
17 that I just recently had.

18 Q. Okay. And we'll actually get to that a
19 little bit later, so that's fine.

20 But before Mr. Jones assumed his role and
21 you had some interaction with him in early
22 February of 2023, it was your belief that ERISA
23 did preempt the state law --

24 A. Yes.

25 Q. -- and that you lacked jurisdiction; is

1 that correct?

2 A. Yes.

3 Q. And you at the time were the head of the
4 division responsible for administering these
5 complaints under Public Chapter 569, correct?

6 A. Yes.

7 Q. Okay. If you could hand that to the
8 court reporter, please.

9 In your division's role in administering
10 Public Chapter 569, focussing mostly on the
11 second half of 2021.

12 A. Uh-huh.

13 Q. Did you receive complaints from a
14 pharmacy in Chattanooga called Thrifty Med?

15 A. Yes.

16 Q. And tell me what you recall -- did you
17 have much interaction with Greg and Julie
18 Bohannon, who are the owners of Thrifty Med?

19 A. I did have some interaction with Greg and
20 I actually think I may have had some e-mails
21 with Julie as well or she was included on some
22 of the correspondence.

23 Q. Were your interactions all by e-mails or
24 did you have conversations with them as well?

25 A. I don't recall. I know there were

1 Q. Is it your understanding that Thrifty Med
2 had been removed from the McKee plan?

3 A. I don't recall.

4 Q. Do you have any understanding as to why
5 Thrifty Med at this point in time was not in
6 the McKee plan?

7 A. No.

8 MR. PICKERING: This will be Exhibit
9 1 to Ms. Trice's deposition.

10 (WHEREUPON, a document was marked as
11 Exhibit Number 1.)

12 BY MR. PICKERING:

13 Q. Ms. Trice, you've been handed what we've
14 marked as Exhibit 1 to your deposition. There
15 are numbers at the bottom, and this is
16 something that we lawyers do, and I just need
17 to state the numbers for the record to help us
18 locate these documents later on. All of these
19 documents will begin with McKee underscore ESI
20 hyphen then several zeros and then some
21 numerals at the end, and I'm just going to
22 reference the numerals with everyone's
23 permission.

24 And so this is -- we call it Bates number
25 332, that was just the last three numbers on

1 the first -- at the bottom of the first page,
2 as you'll see. Don't worry about these, these
3 are just for the record and for the lawyers
4 here.

5 But this appears to be some e-mail
6 exchanges between you and Scott McAnally around
7 the 1st of October of 2021; is that correct?

8 A. Yes.

9 Q. And do these e-mails pertain to a
10 complaint submitted to your office or to the
11 Department of Commerce and Insurance by Thrifty
12 Med Pharmacy in Chattanooga?

13 A. Yes.

14 Q. So let's just maybe work backwards here.
15 If you would go to the next to the last page --
16 I'm sorry, three pages from the back. The last
17 page is inconsequential. But three page from
18 the end at the bottom there's an e-mail from
19 Julie Bohannon to you dated September 28, 2021.
20 Do you see that?

21 A. Uh-huh.

22 Q. And please say "yes" or "no".

23 A. Yes.

24 Q. Okay. And said, Ms. Trice, please see
25 response below that our pharmacy received from

1 MedImpact.

2 Did you understand MedImpact to be the
3 PBM for McKee Foods?

4 A. Yes.

5 Q. And then the response below is on the
6 next page, and I'm not going to read it in its
7 entirety. But the response below from
8 Ms. Jeanine Robertson at MedImpact says in the
9 second paragraph, As you know, self-funded
10 ERISA plans like -- like McKee have never have
11 been subject to Tennessee Code Section
12 56-7-2359.

13 Do you see that?

14 A. Uh-huh.

15 Q. Please say "yes" or "no"?

16 A. Yes.

17 Q. And 2359, that's the same statute we
18 referred to just a few minutes ago, correct?

19 A. Yes.

20 Q. And then in the next -- go back to the
21 e-mail from Ms. Bohannon to you on September
22 the 8th -- 28th, rather. Second sentence she
23 says, "Additionally, I have included a copy of
24 the bulletin that was sent out back in July
25 addressing this issue."

1 Do you see that?

2 A. Yes.

3 Q. And is that the bulletin that we were
4 referring to just a few minutes ago that was --

5 A. Yes.

6 Q. -- the exhibit to Mr. Jones's deposition?

7 Okay. So she sent that to you, correct?

8 A. Yes.

9 Q. And then she asked, Has anything changed?
10 If not, can you please provide guidance on how
11 we should proceed.

12 Correct, that's what she said?

13 A. Yes.

14 Q. And then you have some exchanges with
15 Mr. Huddleston and Mr. McAnally. And I'm
16 referring here to your e-mail to Mr. Huddleston
17 and Mr. McAnally dated October 1, 2021, at
18 8:36 a.m., Good morning. You say, I thought
19 ERISA plans had similar Any Willing Provider --
20 had a similar Any Willing Provider law in
21 place. Does anyone know?

22 Now, what did -- what did you mean by
23 that?

24 A. I was asking if the ERISA plans had a law
25 similar to the state law concerning the Any

1 correct?

2 A. Yes.

3 Q. And at the time that bulletin had already
4 been posted?

5 A. Yes.

6 Q. You already read that bulletin --

7 A. Yes.

8 Q. -- correct?

9 A. Yes.

10 Q. And so just continuing on to the first
11 page of the exhibit, Mr. McAnally gets back to
12 you same day, October 1st at 1:55 p.m. He says
13 maybe about a third of the way down of this
14 e-mail, "I have not seen Mr. Bohannon's
15 original complaint, only his brief e-mail
16 below, but if he's citing the passage --
17 passages of the Public Chapter 569 from this
18 year on allowing customers to choose contracted
19 pharmacies, I would read that as a benefit
20 design issue."

21 Correct?

22 A. That's what his e-mail says.

23 Q. And did you understand at the time that
24 if something was a benefit design issue that
25 it, in fact, was preempt?

1 A. No.

2 Q. And so when you read this reference to a
3 benefit design issue, what did you understand
4 that to be?

5 A. The employer that designed the -- the
6 plan. The benefit of the plan.

7 Q. Okay.

8 And so did you understand the providers
9 that the employer would authorize in the plan,
10 did you understand that to be part of the
11 benefit design?

12 A. No.

13 Q. And do you have any understanding one way
14 or the other about that?

15 A. Not really, no.

16 Q. Okay. And so, again, Mr. McAnally says,
17 I would read that -- the allowing customers to
18 choose contracted pharmacies -- he said, I
19 would read that as a benefit design issue so
20 you are correct, PC 569 cites the Any Willing
21 Pharmacy law, but I don't read it as creating a
22 new Any Willing Pharmacy law for ERISA plans.

23 Do you see that?

24 A. Yes.

25 Q. And that was Mr. McAnally's opinion at

1 the time?

2 A. Yes.

3 Q. And do you consider him to be a
4 knowledgeable person?

5 A. I do.

6 Q. And then very top e-mail on the page you
7 thanked him. We'll just leave it at that, you
8 thanked him for his response, correct?

9 A. Yes.

10 Q. At any time did you ever get back to
11 Mr. McAnally and tell him you believe that he
12 was incorrect in his response and comments in
13 these e-mails?

14 A. No.

15 Q. Did he ever communicate to you that he
16 felt he was incorrect in what he told you
17 essentially saying this was a benefit design
18 issue and that therefore ERISA would preempt
19 the law?

20 A. Not that I can recall.

21 (WHEREUPON, a document was marked as
22 Exhibit Number 2.)

23 BY MR. PICKERING:

24 Q. So Ms. Trice, you've been handed what
25 we've marked as Exhibit 2 to your deposition,

1 Q. Okay. Now, this --

2 A. They were not exempt.

3 Q. This is dated October 27, 2021. The
4 e-mail exchange that we were just referring to
5 between you and Mr. McAnally was October 1,
6 2021, correct?

7 A. That is correct.

8 Q. And that's the same -- earlier in the
9 same month, correct?

10 A. Yes.

11 Q. And at time this letter went out,
12 Mr. McAnally, who you consider to be a
13 knowledgeable person, had basically indicated
14 that the state law was preempted, correct?

15 A. Yes.

16 Q. And so this letter would be consistent
17 with what Mr. McAnally had advised you,
18 correct?

19 A. Yes.

20 Q. And you had reached out to Mr. McAnally
21 for advice, correct?

22 A. Yes.

23 Q. In the next sentence in the same
24 paragraph after saying the Department of
25 Commerce and Insurance has no jurisdiction

1 pertaining to a self-funded/self-insured ERISA
2 plan, Mr. Haralson goes on to say, The
3 authority for final determination involving the
4 payment or non-payment of claims rests with the
5 employer.

6 Now, that's a true statement, isn't it?

7 MR. WENNERLUND: Objection, form.

8 THE WITNESS: As far as I know that's
9 a true statement?

10 BY MR. PICKERING:

11 Q. Yes.

12 A. Yes.

13 Q. Okay. And so, what would determine
14 whether an investigator in your division would
15 make this type of determination of no
16 jurisdiction versus just saying mediation
17 efforts have been exhausted?

18 A. I cannot answer that question.

19 Q. Okay.

20 A. Michael oversees the entire complaint
21 process and the coding of those complaints.

22 Q. Okay. Sorry, I should have taken better
23 notes. Michael's last name again is?

24 A. Barber.

25 Q. Barber, okay.

1 Department's enforcement efforts?

2 A. Yes.

3 Q. Tell me about that.

4 A. Just frustration that more was not being
5 done, basically.

6 Q. What did they want to be done?

7 A. They wanted to be a network -- they
8 wanted their -- they wanted to be a network
9 with McKee Foods.

10 Q. And did -- did they want -- "they" being
11 the Bohannons. Did they want PBMs to be fined?

12 A. Not -- not -- I don't think fines were
13 ever discussed.

14 MR. PICKERING: Will you please hand
15 the witness Jones Exhibit 4.

16 (WHEREUPON, a document was previously
17 marked as Jones Exhibit Number 4.)

18 BY MR. PICKERING:

19 Q. So Ms. Trice, you've been handed what was
20 marked as Exhibit 4 to Mr. Jones's deposition.
21 These are Bates numbers 3459 and 3460. And
22 if -- this is a letter from Express Grips dated
23 February 20, 2023. You'll see that it
24 references a file number 78036. Is that the
25 same file number or tracking number that's in

1 Exhibit 3?

2 A. Yes.

3 Q. And does this appear to be the PBM's
4 response to this complaint submitted by Kayla
5 Copeland that was assigned file number 78036?

6 A. Yes.

7 Q. And so, in the second paragraph of the
8 response, this wording is a little bit
9 different from what we've seen in some of the
10 other exhibits, Express Grips says that they
11 administer prescription drug benefit plans on
12 behalf of plan sponsors. And in this case, the
13 plan sponsor was Evonik Corporation, a
14 self-insured plan. Do you see that?

15 A. Yes.

16 Q. And it goes on to say Express Grips
17 provides plan sponsors with, quote, core, end
18 quote, pharmacy services including third-party
19 claims processing, formulary administration,
20 benefit plan communications and other similar
21 activities.

22 Correct?

23 A. Yes.

24 Q. Is that your understanding of what a PBM
25 does?

1 A. I don't really have a full understanding
2 of what PBMs do.

3 Q. Is that consistent with at least some of
4 the things you understand that PBMs do?

5 A. Yes.

6 Q. Goes on to say in this capacity -- first
7 of all, Express Grips, they're a PBM, right?

8 A. Yes.

9 Q. Goes on to say, "In this capacity,
10 Express Grips is not acting as a healthcare
11 provider or insurer but serves to administer
12 benefit plan designs and formularies in
13 accordance with rules provided by the plan."

14 Do you see that?

15 A. Yes.

16 Q. And so the plan establishes the benefits
17 and design and the PBM perform services for the
18 plan, correct?

19 A. Yes.

20 MR. PICKERING: So if you please hand
21 Ms. Trice Mr. Jones Exhibit Number 1.

22 (WHEREUPON, a document was previously
23 marked as Jones Exhibit Number 1.)

24 BY MR. PICKERING:

25 Q. So Ms. Trice, you've been handed what was

1 marked yesterday as Exhibit Number 1 to
2 Mr. Jones's deposition, and this is Bates
3 number 3882 and 3883. It's an e-mail on the
4 first page from Scott McAnally to Mark Faughn.

5 Do you know who Mr. Faughn is?

6 A. Yes.

7 Q. Who is he?

8 A. He works for Jud Jones.

9 Q. All right. And so if you look at the
10 second page of this Exhibit Number 1, you will
11 see a letter from CVS Caremark fairly recent at
12 the time dated February 7, 2023. Second
13 paragraph advises that the Commercial Vehicle
14 Group, Inc.

15 Did you understand that to be the
16 employer?

17 A. I would assume so. I'm just seeing this,
18 so...

19 Q. Take your time if you need to look at it
20 further. I'm not trying to rush you.

21 A. (Reviews document.)

22 Okay.

23 Q. Okay. So he says that the Commercial
24 Vehicle Group, Inc. benefit plan is a
25 self-funded employee benefit plan that is

1 subject to the Employee Retirement Income
2 Security Act, ERISA. Do you see that?

3 A. Yes.

4 Q. And he goes on to say, "Self-funded ERISA
5 plans are generally not subject to state law
6 particularly when the state law regulates the
7 plan design."

8 Now, you understand -- understood that to
9 be correct, didn't you?

10 MR. WENNERLUND: Objection, form.

11 THE WITNESS: I'm not sure how to
12 answer that.

13 BY MR. PICKERING:

14 Q. Did you -- did you understand that if the
15 state law regulates plan design, it's
16 preemptive based on your reading of the cases?

17 A. Yes.

18 Q. Okay. And so go to the first page of
19 this exhibit. Do you see the transmittal from
20 CVS Caremark? Those are the bottom part of
21 this first page. Transmittal dated February 7
22 attaching the letter that is Bates number 3883,
23 basically providing Mr. McAnally with CV -- CVS
24 Caremark's response. And it has the same file
25 number that's on the letter file number 0096.

1 A. Not to my knowledge.

2 Q. On the communications that went out from
3 the Department of Commerce and Insurance saying
4 that the Department had no jurisdiction over
5 ERISA plans, were any of those communications
6 ever changed or corrected, to your knowledge?

7 A. No.

8 Q. You've described how when these
9 ERISA-related issues would come up, often you
10 would refer those to, quote, Legal within the
11 Department of Commerce and Insurance, correct?

12 A. Yes.

13 Q. Did you ever communicate with anyone in
14 the Department of Commerce and Insurance about
15 the lack of response from Legal?

16 A. With my manager.

17 Q. All right. Tell me --

18 A. Michael and I.

19 Q. Tell me about that.

20 A. The fact that we -- we were frustrated
21 because like the one -- several of these that
22 have been shown, we weren't getting responses
23 back, so...

24 Q. From Legal?

25 A. Yes.

REPORTER'S CERTIFICATE

STATE OF TENNESSEE

COUNTY OF SUMNER

I, MICHELLE CESSNA, Licensed Court Reporter,
with offices in Nashville, Tennessee, hereby certify
that I reported the foregoing video deposition of
VICKIE TRICE by machine shorthand to the best of my
skills and abilities, and thereafter the same was
reduced to typewritten form by me.

I further certify that I am not related to
any of the parties named herein, nor their counsel,
and have no interest, financial or otherwise, in the
outcome of the proceedings.

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MICHELLE CESSNA, LCR, RPR
Checuga Reporting, Inc.
Licensed Court Reporter (TN)

LCR #864 - Expires: 6/30/2026

From: Vickie Trice <Vickie.Trice@tn.gov>

To: Scott McAnally <Scott.McAnally@tn.gov>, Bill Huddleston <Bill.Huddleston@tn.gov>

Cc: "Nikita G. Hampton" <Nikita.G.Hampton@tn.gov>

Subject: RE: [EXTERNAL] Fw: Pharmacy Reinstatement Request (McKee Foods Corporation network)

Date: Fri, 01 Oct 2021 19:27:59 +0000

Importance: Normal

Inline-Images: image001.png; image002.png

Thank you Scott.

I think my brain is on overload 😊



Vickie Trice | Director

Consumer Insurance Services Division

Tennessee Department of Commerce and Insurance

Davy Crockett Tower

500 James Robertson Parkway, Nashville, TN 37243

P: (615) 532-5329 C: (615)-739-7015

Vickie.Trice@tn.gov

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From: Scott McAnally <Scott.McAnally@tn.gov>

Sent: Friday, October 1, 2021 1:55 PM

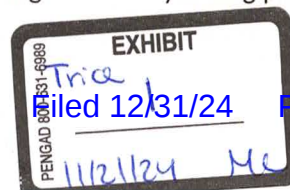
To: Vickie Trice <Vickie.Trice@tn.gov>; Bill Huddleston <Bill.Huddleston@tn.gov>

Cc: Nikita G. Hampton <Nikita.G.Hampton@tn.gov>

Subject: RE: [EXTERNAL] Fw: Pharmacy Reinstatement Request (McKee Foods Corporation network)

Good Afternoon Vickie,

I read MedImpact's response as stating that since McKee Foods uses an ERISA plan, they're not subject to 56-7-2359, the section that prohibits a health insurance issuer from preventing any pharmacy from joining a network if the pharmacy will accept the terms and conditions offered to other network pharmacies. I've not seen Mr. Bohannon's original complaint, only his brief email below, but if he's citing the passages of Public Chapter 569 from this year on "allowing customers to choose contracted pharmacies," I would read that as a benefit design issue. So you are correct, PC 569 cites the "any willing pharmacy" law but I don't read it as creating a new "any willing pharmacy" law for ERISA plans.



Best,
Scott

From: Vickie Trice <Vickie.Trice@tn.gov>
Sent: Friday, October 1, 2021 1:46 PM
To: Scott McAnally <Scott.McAnally@tn.gov>; Bill Huddleston <Bill.Huddleston@tn.gov>
Cc: Nikita G. Hampton <Nikita.G.Hampton@tn.gov>
Subject: RE: [EXTERNAL] Fw: Pharmacy Reinstatement Request (McKee Foods Corporation network)

Scott

So I am aware of the Rutledge case but the pharmacist is citing language from the recent legislation that speaks to allowing the consumer to choose a "contracted" pharmacy of their choice and not to be steered to another pharmacy. I think that is the issue of contention.
Thrifty Medplus is not contracted but trying to get contracted and thinking the new legislation allows them to contract at will which I don't believe was the intent.
I think the PBM is correct in their assessment of the law but just not 100% sure.

Thoughts??



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From: Scott McAnally <Scott.McAnally@tn.gov>
Sent: Friday, October 1, 2021 9:37 AM
To: Vickie Trice <Vickie.Trice@tn.gov>; Bill Huddleston <Bill.Huddleston@tn.gov>
Cc: Nikita G. Hampton <Nikita.G.Hampton@tn.gov>
Subject: RE: [EXTERNAL] Fw: Pharmacy Reinstatement Request (McKee Foods Corporation network)

Good Morning Vickie,

I am not aware of an "any willing pharmacy law" for ERISA plans. I think there are some people that read the *Rutledge* SCOTUS decision to allow state pharmacy laws and regs to apply to ERISA plans so that may be what Mr.

Bohannon is referring to.

Best,
Scott

From: Vickie Trice <Vickie.Trice@tn.gov>
Sent: Friday, October 1, 2021 8:36 AM
To: Bill Huddleston <Bill.Huddleston@tn.gov>; Scott McNally <Scott.McAnally@tn.gov>
Cc: Nikita G. Hampton <Nikita.G.Hampton@tn.gov>
Subject: FW: [EXTERNAL] Fw: Pharmacy Reinstatement Request (McKee Foods Corporation network)

Good morning

I thought the ERISA plans had a similar "any willing provider" law in place? Does anyone know?



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From: Julie Bohannon <[REDACTED]>
Sent: Tuesday, September 28, 2021 6:32 PM
To: Vickie Trice <Vickie.Trice@tn.gov>
Cc: [REDACTED] Lucy Adkins <lucy@tnpharm.org>; Julie Bohannon <[REDACTED]>
Subject: [EXTERNAL] Fw: Pharmacy Reinstatement Request (McKee Foods Corporation network)

*** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. ***

Ms. Trice,

Please see the response below that our pharmacy received from MedImpact. Additionally, I have included a copy of the bulletin that was sent out back in July addressing this issue. Has anything changed? If not, can you please provide guidance as to how we should proceed?

Thank you,
Greg Bohannon

423-309-1517 cell

----- Forwarded Message -----

From: Jeanine Robertson <jeanine.robertson@medimpact.com>

To: [REDACTED]

Sent: Tuesday, September 28, 2021, 04:00:28 PM EDT

Subject: Pharmacy Reinstatement Request (McKee Foods Corporation network)

Dear Mr. Bohannon:

MedImpact Healthcare Systems, Inc. ("MedImpact") is in receipt of the reinstatement request submitted by Thrifty MedPlus Pharmacy ("Thrifty") to MedImpact's Pharmacy Grievance E-mail Box, relating to the McKee Foods Corporation ("McKee") network. The reinstatement request refers to Tennessee House Bill 1398, which provides, in relevant part, "A pharmacy benefits manager or a covered entity shall not interfere with the patient's right to choose a contracted pharmacy or contracted provider of choice in a manner that violates § 56-7-2359 or by other means, including inducement, steering, or offering financial or other incentives."

As you know, self-funded ERISA plans like McKee have never been subject to Tennessee Code § 56-7-2359. The cross-reference to Tennessee Code § 56-7-2359 in House Bill 1398 does not alter the historic scope of that law and instead merely incorporates previously existing requirements into the new law. Therefore, McKee remains exempt from the requirements of Tennessee Code § 56-7-2359, and MedImpact must decline Thrifty's request for reinstatement into the McKee Foods Corporation network.

If you have any questions or require any further information, we welcome an opportunity to further respond.



Jeanine Robertson, MBA

Director, Pharmacy Network Administration

Office | [858-790-6108](tel:858-790-6108)

Cell [858-213-4086](tel:858-213-4086)

jeanine.robertson@medimpact.com

10181 Scripps Gateway Ct | San Diego, CA 92131

medimpact.com

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STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
INSURANCE DIVISION
CONSUMER INSURANCE SERVICES
500 JAMES ROBERTSON PARKWAY, 10TH FLOOR
NASHVILLE, TENNESSEE 37243-0574
TELEPHONE: (615) 741-2218
FAX: (615) 532-7389

10/27/2021

Thrifty MedPlus Pharmacy
5032 Ooltewah-Ringgold Rd
Suite 100
Ooltewah, TN 37363

Tracking Number: 71356
Respondent: MedImpact Healthcare Systems Inc.

Thrifty MedPlus Pharmacy:

After reviewing the information provided, it appears your health coverage is provided by an employer sponsored benefit plan. This type of plan is known as a self-funded or self-insured plan. With this type of plan the employer assumes some or all of the risk. Instead of paying premiums to an insurance company, the employer pays claims from its own funds. Employers who self-insure may handle administration in-house or hire a third party administrator (TPA). The TPA performs certain administrative services including claim review and claim processing.

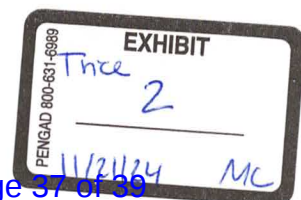
The Tennessee Department of Commerce and Insurance has no jurisdiction pertaining to a self-funded/self-insured benefit plan. The authority for final determination involving the payment or non-payment of claims rests with the employer. The employee is entitled to appeal any denial of benefits to their employer under provisions of ERISA (Employee Retirement Income Security Act of 1974). This appeal process is usually explained in the benefit booklet provided by the employer. You may contact the U.S. Department of Labor at 1-866-444-3272.

I do hope this information proves helpful.

The Tennessee Department of Commerce and Insurance would like to know how we are doing in trying to assist Tennessee consumers with insurance related issues. Please take a moment to click on the attached link and take a brief survey concerning your experience with our office and how we could improve our services.

The link to the survey is listed below:

<https://www.tn.gov/commerce/insurance/consumer-resources/customer-service-survey.html>



Respectfully,

Allison Haralson
Investigator
Consumer Insurance Services
• 615-532-2715
Allison.Haralson@tn.gov

From: Marina Caro
Sent: Tuesday, November 2, 2021 9:52 AM
To: 'nicole@thriftymedplus.com'
Subject: 71028 Thrifty MedPlus Pharmacy - Response to Rebuttal and Closing Letter
Attachments: MedImpact-Rebuttal Response#71028.pdf; 71028 Closing Letter.pdf

November 2, 2021

Tracking Number: 71028
Respondent: MedImpact Healthcare Systems Inc.

Dear Thrifty MedPlus Pharmacy:

Thank you for contacting the Tennessee Department of Commerce & Insurance. We received a response to your rebuttal. It is attached for your review and file.

Since our mediation efforts have now been exhausted, we are closing our investigation file. Should you have any questions or comments concerning our actions, please feel free to contact me. Thank you for the opportunity to have assisted you with these matters.

Sincerely,



Marina Caro, FLMI | Insurance Investigator
Consumer Insurance Services Division
Davy Crockett Tower 10th floor
500 James Robertson Pkwy, Nashville, TN 37243
p. 615-532-5332
f. 615-532-7389
marina.caro@tn.gov
[tn.gov/commerce](https://www.tn.gov/commerce)

We always aim for **Great Customer Service**. Let us know how we did by taking a few minutes to complete our online survey at: <https://www.tn.gov/commerce/insurance/consumer-resources/customer-service-survey.html>

